

FILED

MAY 03 2022

DEPARTMENT OF REAL ESTATE

By B. Nicholas

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

EB PREFERRED;

and

RALPH DOMENICO SCHIAVONE,
individually and as designated officer of EB
Preferred.,

Respondents.

No. H-3426 FR

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on April 13, 2022, and the Findings of Fact set forth herein, which are based on one or more of the following: (1) The express admissions of Respondents, EB PREFERRED (EB) and Ralph Domenico Schiavone (Schiavone); (2) affidavits; and (3) other evidence.

This Decision revokes one or more real estate licenses on the grounds of the violation of the Real Estate Law, Part 1 commencing with Section 10000 of the Business and Professions Code (Code) and/or the Regulations of the Real Estate Commissioner, Title 10, Chapter 6 of the California Code of Regulations (Regulations).

Pursuant to Government Code Section 11521, the California Department of Real Estate (Department) may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license, or to the reduction of a penalty, is controlled by Section 11522 of the Government Code. A copy of Government Code Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

FINDINGS OF FACT

1.

On February 10, 2022, Brenda Smith made the Accusation in her official capacity as a Supervising Special Investigator of the Department. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, return receipt requested, and regular mail to:

- EB's last known mailing address on file with the Department, ATTN: Ralph Domenico Schiavone, 325 Kern Street, Taft, CA 93268, on February 18, 2022;
- Schiavone's last known mailing address on file with the Department, 29100 La Vista Avenue, Corona, CA 92879, on February 18, 2022; and
- Salesperson Ethele Marie Barron, Chief Executive Officer, 100% shareholder, and Agent of Process for EB, at her last known mailing address on file with the Department, 325 Kern Street, Taft, CA 93268, on March 4, 2022.

On April 13, 2022, no Notice of Defense having been received or filed on behalf of EB herein within the time prescribed by Section 11506 of the Government Code, EB's default was entered herein.

2.

EB is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code.

3.

At all times mentioned, EB was and is licensed by the Department as a real estate broker, License ID 01979445. EB was licensed by the Department as a real estate corporation on or about December 27, 2017. Unless renewed, EB's corporate broker license will expire December 26, 2021.

At all times mentioned between December 27, 2017, and May 18, 2021, Schiavone was licensed by the Department as the designated broker officer of EB. As said designated officer-broker, Schiavone was responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of EB for which a license is required.

After May 18, 2021, the license status of EB was "No Broker Affiliation."

Effective October 26, 2020, in Case No. H-3249 FR before the Department, the Real Estate Commissioner issued an order suspending the real estate corporate broker license of EB for 30-days stayed upon terms and conditions, for violation of Business and Professions Code (Code) Sections 10177(d) and 10177(g).

At all times mentioned, restricted real estate salesperson Ethele Marie Barron (Barron) was the 100 percent shareholder and Chief Executive Officer of EB. EB was registered as a corporation (#C3758084) with the California Secretary of State on or about February 18, 2015.

Beginning on or about September 3, 2019, the corporate powers, rights and privileges of EB were forfeited pursuant to the provisions of the Revenue and Taxation Code.

4.

At all times mentioned, Respondent Schiavone was licensed by the Department individually as a real estate broker, License ID 0158966. Schiavone was licensed as a real estate salesperson on April 27, 1993, and as a broker on September 7, 2001. Unless renewed, Schiavone's broker license will expire September 6, 2025.

Schiavone is also licensed by the Department as the designated broker officer of HLS Group Inc.

Effective October 26, 2020, in Case No. H-3249 FR before the Department, the Real Estate Commissioner issued an order suspending the real estate broker license of Schiavone for 30-days stayed upon terms and conditions, for violation of Code Section 10177(h).

5.

At all times mentioned, Barron was licensed by the Department as a restricted real estate salesperson, License ID 01812075. Barron was originally licensed as a real estate salesperson on September 19, 2007.

Effective February 5, 2015, in Case No. H-2872 FR before the Department, the Real Estate Commissioner issued an ordering Barron's real estate salesperson license to be revoked, granting the right to a restricted real estate salesperson license, for violation of Code Section 10177(g) of the Code.

Effective October 26, 2020, in Case No. H-3249 FR before the Department, the Real Estate Commissioner issued an order suspending the real estate broker license of Barron for 30-days stayed upon terms and conditions, for violation of Code Sections 10177(d) and 10177(g).

From January 25, 2018, through May 17, 2021, Barron's real estate salesperson license was affiliated under the brokerage of EB. On or about January 25, 2018, Barron submitted to the Department a Restricted Real Estate Salesperson Change Application, which included an Employing Broker Certification. Schiavone signed the Employing Broker Certification which provides in part:

"I hereby certify that I have read the Decision of the Real Estate Commissioner referenced above, which provides for the issuance of a restricted real estate

salesperson license ... I will carefully review all transaction documents which the restricted salesperson licensee prepares and will otherwise exercise close supervision over the licensed activity of the above named salesperson ...”

6.

Whenever reference is made in an allegation in this Accusation to an act or omission of EB, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with EB committed such acts or omissions while engaged in furtherance of the business or operation of EB and while acting within the course and scope of their corporate authority and employment.

AUDIT FR-20-0045

7.

On or about May 28, 2021, the Department completed its audit (FR-20-0045) of the books and records of EB's property management activities described in Paragraph 8. The auditor herein examined the records for the period of December 1, 2019, through December 31, 2020.

8.

At all times mentioned, EB engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Sections 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation; EB leased or rented and offered to lease or rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

As of the audit examination, EB managed thirty (30) one-to-four family residences for fifteen (15) owners. EB collected approximately \$528,000 in trust funds annually.

EB's property management services include, but not limited to, collecting rents, paying expenses, and screening tenants. For such property management services, EB charged a management fee of 8 to 10 percent of collected rents.

9.

While acting as a real estate broker as described in Paragraph 8, EB accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in connection with the leasing, renting, and collection of rents on real property or improvements thereon, as alleged herein, and thereafter from time to time made disbursements of said trust funds.

The trust funds accepted or received by EB were deposited or caused to be deposited by EB into accounts which were maintained by EB for the handling of trust funds, and

thereafter from time-to-time EB made disbursements of said trust funds, identified as follows:

TRUST ACCOUNT # 1	
Bank Name and Location:	Bank of America Taft, California
Account No.:	XXXXXXXXX5565
Account Name:	EB Preferred Common Client Trust Account
Signatories:	Ralph Schiavone Ethele Barron
Purpose:	Trust Account #1 was used for the handling of trust funds from property management activities.

10.

In the course of the property management activities described in Paragraph 8, and during the audit examination period described in Paragraph 7, EB violated the Code and Regulations described below:

Trust Account Accountability and Balances

11.

Based on the records provided during the audit, a bank reconciliation for Trust Account #1 was prepared for as of December 31, 2020. The adjusted bank balance of Trust Account #1 as of December 31, 2020, was compared to the beneficiaries' accountability for Trust Account #1 as of December 31, 2020.

Adjusted Bank Balance	\$5,500.20
Accountability	\$17,264.64
Trust Fund Shortage	<u>(\$11,764.44)</u>

A shortage of \$11,764.44 was found in Trust Account #1 as of December 31, 2020. The trust fund shortage was caused by Bank Fees of \$316, and unidentified shortage of \$11,448.44.

EB provided no evidence that the owners of the trust funds had given their written consent to allow Respondents to reduce the balance of the funds in Trust Account #1 to an amount less than the existing aggregate trust fund liabilities, in violation of Section 10145 of the Code and Section 2832.1 the Regulations.

Trust Account Reconciliation

12.

EB failed to reconcile the balance of separate beneficiary or transaction records with the control record of trust funds received and disbursed at least once a month, and/or failed to maintain a record of such reconciliations for each bank account holding trust funds as required by Section 2831.2 of the Regulations.

SUSPENDED CORPORATE STATUS

13.

During the audit period, EB, while forfeited by the Secretary of State, in course of the real estate resale brokerage activities described in Paragraph 8, solicited prospective tenants for, negotiated rental agreements for and collected rents from real properties owned by another or others, for approximately 30 one-to-four family residences for fifteen owners, including but not limited to:

OWNER	PROPERTY ADDRESS
Keitha D.	121 Center 137 Center 139 Center 505 3 rd 300 Lucard, Apartment B 304 Lucard
Andrew H.	309 A Street 529 D Street
Richard D.	508 Bechanan 510 Buchanan
Scott W./The Williams Family Trust	514 Lucard 210 Jefferson 514 ½ Lucard
Tracy N.	312 Shattuck 421 Taylor 27598 Maple 520 Philippine 216 Suzanne 304 Fillmore
Steve M.	406 Buchanan 406 ½ Buchanan
FR Properties LLC	531 ½ D Street 418 ½ San Emidio 611 Front 609 Front 420 ½ San Emidio 101 Buchanan 232 Olive 420 San Emidio 531 D Street

Richard D.	510 Buchanan 508 Buchanan
Richard F.	501 Van Buren
Jason B.	123 Asher Way 314 Tyler
J. Landers	106 E. Kern Street
Joseph V.	623 Lucard
John & Joy B.	615 Harrison
Larry & Virginia R.	327 E Street
Mark M.	142 Kern Street 128 E. 2 nd 130 E. 2 nd 708 Lucard 301 Montview
Maverick Property LLC	539 Philippine 514 ½ Lierly 28133 Chaparral 108 E. Kern 514 Lierly 410 ½ S. 7 th 501 Philippine 702 N. Lincoln
Positive Property LLC	225 Woodrow

DETERMINATION OF ISSUES

14.

The acts and/or omissions of EB as described in Paragraphs 11 and 12, above, constitute cause for the suspension or revocation of all the licenses, license endorsements, and license rights of EB under the provisions of Sections 10177(d) and 10177(g) of the Code in conjunction with Section 10145 of the Code and Sections 2832.1 and 2831.2 of the Regulations.

15.

The acts and/or omissions of EB as described in Paragraph 13, above, constitute cause for the suspension or revocation of all the licenses, license endorsements, and license rights of EB under the provisions of Sections 10177(d) and 10177(g) of the Code in conjunction with Section 2742(c) of the Regulations.

16.

The standard of proof applied was clear and convincing evidence to a reasonable certainty.

ORDER

All licenses and licensing rights of Respondent EB PREFERRED under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on MAY 24 2022.

DATED: 4.29.22.

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

1 Department of Real Estate
2 1651 Exposition, Blvd.
3 Sacramento, CA, 95815

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APR 13 2022

DEPARTMENT OF REAL ESTATE
By B. Nicholas

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9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of)

12 EB PREFERRED;)

No. H-3426 FR

13 and)

DEFAULT ORDER

14 RALPH DOMENICO SCHIAVONE,)
15 individually and as designated officer of EB)
16 Preferred.,)

17 Respondents.)

18 Respondent EB PREFERRED, having failed to file a Notice of Defense
19 within the time required by Section 11506 of the Government Code, is now in default. It is,
20 therefore, ordered that a default be entered on the record in this matter.

21 IT IS SO ORDERED APRIL 13, 2022.

22 DOUGLAS R. McCAULEY
23 REAL ESTATE COMMISSIONER

24
25 By: CS
26 CHIKA SUNQUIST
27 Assistant Commissioner, Enforcement